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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,349	10/30/2001	Gregory V. Hofer	100110429-1	4967

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EXAMINER

VIEAUX, GARY

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/002,349

Applicant(s)

HOFFER ET AL.

Examiner

Gary C. Vieaux

Art Unit

2612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☒ Newly proposed or amended claim(s) 14, 16 and 17 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 14, 16 and 17.
Claim(s) objected to: _____.
Claim(s) rejected: 7-13.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding the 35 U.S.C. §112, First Paragraph rejection of claim 7, Applicants contends that the term "preselected phase" refers to the starting point of image capture (Remarks, p.6), with the term "phase" tending to be better understood in the art than "synchronized with the frequency" and "synchronized frequency" (Remarks, p. 6), and that these terms are therefore not only interchangeable, but also give rise to the "preselected phase" term being disclosed in the specification in the manner that "synchronized with the frequency" and "synchronized frequency" are disclosed. The Examiner respectfully disagrees.

In response to the contention that the term "preselected phase" refers to the starting point of image capture (Remarks, p.6), with the term "phase" tending to be better understood in the art than "synchronized with the frequency" and "synchronized frequency" (Remarks, p. 6), and that these terms are therefore interchangeable, the Examiner directs Applicants to the clear difference in their argued usage.

Setting the adjective of "preselected" aside, the term phase can take several forms: when used as a noun, it is generally accepted in the art when taken in reference to frequencies, to be a particular point in the time of a cycle, measured from some arbitrary zero, and when the term phase is used as a verb, it is generally accepted in the art when taken in reference to frequencies, to mean to set or regulate so as to be synchronized. The Applicants argue that the term "phase" is equivalent to the verb usage, however, the language as claimed employs the term "preselected phase" as a noun, as illustrated in the language of claim 7, as amended, which is as follows:

A method for auto-focus control in a digital camera, the digital camera comprising a movable lens, the method comprising:

- determining a presence of artificial illumination in the scene;
- determining a frequency of illumination intensity variations in the scene;
- taking a first exposure with the [[a]] lens in a first position, the first exposure occurring at a preselected phase of synchronized with the frequency of intensity variations in the scene;
- moving the lens to a second position;
- taking a second exposure at the synchronized preselected phase of the frequency of illumination intensity variations; and
- determining which lens position has a better focus measure.

Therefore, based on the applied usage, support for the interchangeability of the term "preselected phase", is not found to be appropriate. Additionally, nowhere in the specification is support found where the term "phase", let alone "preselected phase", may be acceptably interchanged with either "synchronized with the frequency" or "synchronized frequency." Therefore, not only is the term "phase" not interchangeable with either "synchronized with the frequency" or "synchronized frequency", but support for the "preselected phase" term being disclosed in the specification in the manner that "synchronized with the frequency" and "synchronized frequency" are disclosed cannot also be found to be supported.

Applicants, in the alternative, contend that a "preselected phase" is very well known in the art as one of the building blocks for understanding AC signals in phase (Remarks, p.6-7), and therefore, a predetermined phase is well-known by one skilled in the art. The Examiner agrees with the Applicants that the term "phase" is a building block for understanding AC signals. The Applicant further contends that because the term "phase" is well known by one skilled in the art, a "predetermined phase" is also well known (Remarks, p. 6-7, emphasis added.) However, the adjectives "preselected" and "predetermined" as currently employed in argument by the Applicants, although close in nature, are not synonymous, particularly when taken in conjunction with the additional term "phase". Additionally, Applicants state the term "predetermined phase" is described in the specification, however the Examiner was unable to find the term "predetermined phase" within the specification, or within independent claims 7 or 13, rendering further discussion regarding the term "predetermined phase" moot.

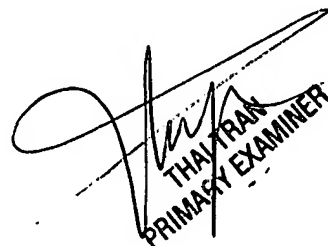
As stated in the Final Office Action of June 2, 2005, independent claims 7 and 13 include the amended limitation relating to exposures occurring at a "preselected phase" (Remarks p. 2, lines 5-9 of claim 7, and p. 4 lines 15-20 of claim 13.) Again, the specification was not found to include support for this limitation, and Applicants' Remarks were not found to present support for this limitation.

After further review of the application in light of Applicants' Remarks, nowhere within the disclosure was subject matter found to fully support exposures occurring at a "preselected phase" of the frequency of illumination intensity variations, as recited in amended claim 7 or a "preselected phase" in the frequency of the periodic changes as recited in amended claim 13, which would reasonably convey to one skilled in the relevant art that the inventors had possession of the claimed invention at the time the provisional application was filed, as required by 35 U.S.C. 112, first paragraph. Review of the Specification indicates support for synchronizing the exposures to the phase of the driving source (p. 7 lines 10-12, p. 9 lines 9-15, and p. 12 lines 4-6), in which synchronization is unimportant (p. 15 lines 5-8 and p.17 line 2), or in which exposure sample rate does not synchronize phase with light fluctuations (p. 11 line 1-8), but the Specification is not found to provide full support for the claim language as currently written, with particular emphasis directed towards locating clearly written support for the limitation of "preselected phase".

Claims 8-12 depend either directly or indirectly from independent claim 7, and therefore contain and include all limitations associated therewith.

Claim 13 is substantively similar in form to claim 7, and therefore argument and response are applied correspondingly.

Based on the foregoing, the Examiner respectfully stands behind the original 35 U.S.C. §112, First Paragraph rejections of claims 7-13.


THAI TRAN
PRIMARY EXAMINER